UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF NEW JERSEY
Trenton Vicinage

NEW JERSEY MANUFACTURERS INSURANCE GROUP a/s/o GEORGE AND PATRICIA TRAMPLER Plaintiff, v. VIVINT SOLAR, INC., AND ABC CORPORATION 1-10 AND JOHN DOES 1-10 Defendants.	DOCKET NO.:______________ Civil Action

COMPLAINT

Plaintiffs, New Jersey Manufacturers Insurance Group, as subrogee of George and Patricia Trampler, by way of Complaint say:

JURISDICTION

Jurisdiction in this case is based on diversity of citizenship of the parties and the amount in controversy. The plaintiff is an insurance provider based in the State of New Jersey. Defendant is a corporation under the laws of the State of Utah with its headquarters located at 301 North Thanksgiving Way, Suite 500, Lehi, UT 84043. The amount in controversy exceeds the sum of Seventy-five Thousand Dollars ($75,000.00), exclusive of interest and costs.

PARTIES

1. The plaintiff, New Jersey Manufacturers Insurance Group ("NJM") is an insurance company with a principal place of business at 301 Sullivan Way, West Trenton, New Jersey 08628, and insured the home owned by George and Patricia Trampler, located at 314 Park Avenue, Union, NJ 07735.

2. Defendant, Vivint Solar, Inc. ("VIVINT.SOLAR") is a corporation doing business across the United States, and within the State of New Jersey, engaged in the sales of solar generated electrical services including the design and installation of solar panel systems to the public, with headquarters located at 3301 North Thanksgiving Way, Suite 500, Lehi, UT 84043, with registered agent located at The Corporation Trust Company, 820 Bear Tavern Road, Ewing, NJ 08628.

3. Defendants, ABC Corporation 1-10 and John Does 1-10("JOHN DOE"), are individuals or entities whose identities are currently unknown, engaged in the business of sales, delivery, design and installation of solar generated electrical services and equipment as agents, servants, employees, representatives and/or subcontractors of defendant, Vivint.Solar.

BACKGROUND

4. Sometime prior to August 29, 2014, NJM's insured, the Tramplers, entered into a contract to purchase solar generated electrical services from defendant, Vivint.Solar.

5. As part of this agreement, the installation of a solar panel array system on the roof of the Trampler home was required.

6. The installation of the subject system was to be performed by defendant, Vivint.Solar.

7. On August 29, 2014, while the subject installation process was still in process, a fire occurred at the Trampler home.

8. The fire originated on the exterior of the home on the roof, directly below solar panel 2E in the area of an Enphase interactive converter.

9. The fire was caused by the negligent and improper design and installation of the subject solar panel system by defendant, Vivint.Solar.

10. The fire caused substantial damage to the Trampler home and their personal belongings, resulting in repairs, restoration and replacement of property, as well as the need to find an alternative place to live while the home was being restored.

11. As a direct and proximate result of the damages sustained, the Tramplers filed their claim with NJM for property damage and loss of use.

12. As a result of the aforementioned claim, NJM incurred damages an amount of $256,914.52 in payments to its insured and to repair and restore the home to it original condition prior to the fire.

13. As a result of these payments, NJM now, as subrogee of the George and Patricia Trampler, seeks to recover the aforementioned damages.

COUNT I
NEGLIGENCE

14. Plaintiff repeats the allegations set forth in paragraphs 1 through 13 above as though set forth at length herein.

15. The fire and the resulting damage was caused by the negligence, carelessness and recklessness of defendant, Vivint.Solar, its agents, servants and employees in performing their work pursuant to the contract it entered into with NJM’s insured.

16. Vivint.Solar's negligence is further outlined in the following particulars:

(a) Failed to ensure that the power cords did not have excessive slack that could result in a frictional/insulation fault or failure;

(b) failed to ensure the proper installation of cables under the inverters (the heatsink) and the PV modules in to prevent heat transfer;

(c) failed to ensure that the electrical installations were properly ventilated allowing proper air circulation;

(d) failed to ensure that the electrical installations were properly made in accordance with the National Electric Code (NEC), Article 690 concerning Wiring Methods; and Article 100, concerning Ventilation;

(e) failed to ensure that all electrical installations and wirings were performed in accordance with the Enphase's installation specifications;

(f) failed to supervise the employees, representatives, agents, servants and/or subcontractors as they performed the installation work to ensure that it was performed in the proper manner; and

(g) failed to engage, retain and/or hire employees, representatives, agents, servants, and/or subcontractors with adequate background, education, or training to perform the electrical wiring and installation work in a safe and proper manner.

17. As a result of this negligent and improper installation of the system, and the sufficient sunlight that electrically energized the subject PV modules resulted in the generation of enough heat energy to ignite a fire.

18. As a result of the fire, NJM's insured was forced to have repair and restoration work done and experience an interruption of in their ability to live in their home.

19. By reason of the foregoing, plaintiff, NJM suffered damages in an amount in excess of $256,914.52, together with interest and costs of this action, to which they are subrogated.

WHEREFORE, plaintiff, New Jersey Manufacturers Insurance Group, as subrogee of George and Patricia Trampler, demands judgment in its favor and against defendant, Vivint Solar, Inc., in the amount of $256,914.52 together with the costs of this action, and any other relief this Court may deem just and proper.

COUNT II
ABNORMALLY DANGEROUS ACTIVITY

20. The plaintiff repeats and reiterates the allegations contained in paragraphs 1 through 19 hereof as though set forth herein at length.

21. Defendants supplied, maintained, and/or installed solar panels on Plaintiff's premises.

22. Due to the solar panel product being abnormally dangerous and the installation of them being an abnormally dangerous activity, the unavoidable risk inherent in it requires that it be carried on at Defendants peril, rather than at the expense of the innocent person who suffers harm as a result of it, thereby resulting in Defendants being subjected to an absolute duty to safeguard.

23. As a direct and proximate result of the fire caused by the solar panels, NJM's insured was forced to have repair and restoration work done and experience an interruption of in their ability to live in their home.

24. Defendants are strictly liable.

WHEREFORE, plaintiff, New Jersey Manufacturers Insurance Group, as subrogee of George and Patricia Trampler, demands judgment in its favor and against defendant, Vivint Solar, Inc., in the amount of $256,914.52 together with the costs of this action, and any other relief this Court may deem just and proper.

COUNT III
BREACH OF CONTRACT

25. The plaintiff repeats and reiterates the allegations contained in paragraphs 1 through 24 hereof as though set forth herein at length.

26. At all times relevant to this complaint, NJM's insured entered into an expressed and/or binding service and installation agreement with Vivint.Solar.

27. As a direct and proximate result of the aforementioned actions of the defendant, Vivint.Solar, a fire occurred at the home of NJM's insured.

28. As direct and proximate result of the aforementioned actions of the defendant, Vivint.Solar, it breached its contract with NJM's insured, resulting in a substantial loss to the plaintiff.

29. By reason of the foregoing, plaintiff, NJM suffered damages in the amount of $256,914.52, together with interest and costs of this action, to which they are subrogated.

WHEREFORE, plaintiff, New Jersey Manufacturers Insurance Group, as subrogee of George and Patricia Trampler, demands judgment in its favor and against defendant, Vivint Solar, Inc., in the amount of $256,914.52 together with the costs of this action, and any other relief this Court may deem just and proper.

COUNT IV
BREACH OF WARRANTY

30. The plaintiff repeats and reiterates the allegations contained in paragraphs 1 through 29 hereof as though set forth herein at length.

31. In performing its services pursuant to the sale of solar generated electrical services and installation of the subject solar panel system, defendant, Vivint.Solar, expressly and/or impliedly warranted that their work would be done in a prudent and workmanlike manner.

32. The fire and its resultant damage sustained by NJM's insured, was caused by Vivint.Solar's breach of such express and/or implied warranties.

33. As direct and proximate result defendant, Vivint.Solar's breach of these express and/or implied warranties, NJM's insured was forced to have repair and restoration work done, and mold remediation done, and an interruption of in their ability to live in their home.

34. By reason of the foregoing, plaintiff, NJM suffered damages in the amount of $256,914.52, together with interest and costs of this action, to which they are subrogated.

WHEREFORE, plaintiff, New Jersey Manufacturers Insurance Group, as subrogee of George and Patricia Trampler, demands judgment in its favor and against defendant, Vivint Solar, Inc., in the amount of $256,914.52 together with the costs of this action, and any other relief this Court may deem just and proper.

COUNT V
STRICT LIABILITY

35. The plaintiff repeats and reiterates the allegations contained in paragraphs 1 through 34 hereof as though set forth herein at length.

36. Defendant, at all times material to this action, sold electricity and placed such product into the market when said electricity passed through Plaintiff's meter.

37. The electricity reached Plaintiff without any substantial change in the condition.

38. Defendant owed a duty of care to Plaintiff to manufacture and sell electricity in a way that was free from defects and fit for its intended purpose.

39. Plaintiff used the electricity in a way that was intended and expected by Defendant.

40. The electricity generated was a direct and proximate cause of the fire that resulted in substantial loss to the Plaintiff.

41. As direct and proximate result of Defendant, NJM's insured was forced to have repair and restoration work done, and mold remediation done, and an interruption of in their ability to live in their home

42. As a result of the electricity generated by Defendant's product, Defendant is strictly liable to Plaintiff.

WHEREFORE, plaintiff, New Jersey Manufacturers Insurance Group, as subrogee of George and Patricia Trampler, demands judgment in its favor and against defendant, Vivint Solar, Inc., in the amount of $256,914.52 together with the costs of this action, and any other relief this Court may deem just and proper.

DESIGNATION OF TRIAL COUNSEL

Dennis J. Crawford, Esquire is hereby designated as trial counsel on behalf of the plaintiff in the within action.

DEMAND FOR TRIAL BY JURY

Demand is hereby made for a trial by jury as to all issues.

CRAWFORD & McELHATTON

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Dated: 7/12/2016